82-1468

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

GERTRUDE REMINGA, Executrix of the Estate of Thomas H. Reminga, Deceased, and BARBARA SUE BREEDEN, Executrix of the Estate of James Robert Breeden, Deceased,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI, WITH JOINT APPENDIX, TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

(1) WHERE A JUDGMENT FOR DAMAGE "WITH INTEREST FROM THE DATE OF JUDGMENT" IS RENDERED AGAINST THE UNITED STATES GOVERNMENT UNDER THE FEDERAL TORT CLAIMS ACT, AND THE GOVERNMENT APPEALS THE JUDGMENT, CAN 31 U.S.C. §724(a) NEGATE THE GOVERNMENTS LIABILITY FOR SUCH INTEREST?

(2) IS 31 U.S.C. §724(a) UNCONSTITIONAL?

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The Petitioners, Gertrude Reminga, Executrix of the Estate of Thomas H. Reminga, deceased, and Barbara Sue Breeden, Executrix of the Estate of Robert Breeden, deceased, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals of the Sixth Circuit entered in this proceeding on December 16, 1982.

OPINION BELOW

The Court of Appeals for the Sixth Circuit filed an opinion on December 16, 1982. That opinion will be published. A copy of the opinion appears in the Appendix hereto (App. A).

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on December 16, 1982. This petition for certiorari was timely filed within Ninety (90) days of the said date, pursuant to Rule 20 and 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT XIV, SECTION 1

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The plaintiffs are seeking payment from the defendant government for interest that was incorporated in, and a part of, a judgment order that was rendered by the trial court (App. E).

The plaintiffs' decedents were passengers in a small private plane that crashed into guy wires of an excessively tall television tower near Rhinelander, Wisconsin, on the 17th day of November 1968. A complaint was filed against the defendant government on June 18, 1971. On January 19, 1978, the trial court awarded judgment to five persons in varied amounts, totaling $701,151.00 "with interest from the date of judgment" (App. E). On March 14, 1978, the defendant government filed a Notice of Appeal. The Sixth Circuit Court of

Appeals, in case No. 78-1154, affirmed the judgment on October 2, 1980.The case was remanded to the U.S. District Court on January 13, 1981. On March 16, 1981, the defendant's counsel, after waiting out the appeal time, and after receiving a repeated demand from the plaintiffs for payment, forwarded a transmittal letter to its General Accounting Office requesting checks for payment of the principal sums awarded to the respective individuals; without making a demand for interest (App. F).

The plaintiffs thereafter made a demand on the Attorney General and on the General Accounting Office for payment of the interest awarded to the plaintiffs in the Judgment Order, but the defendant refused payment for the interest; on the ground that the plaintiffs failed to make

a timely demand on the General Accounting Office for Payment of the said interest.

Counsel for plaintiffs admit that they made no demand for payment of principal or interest on the defendant's General Accounting Office until after the conclusion of the government's appeal; they relied on the order of the court and on the generally accepted restricted procedure of dealing with a party through its counsel.

Because of the defendant's persistent refusal to pay the judgment interest as ordered by the court (App. F) the plaintiffs filed a motion in the U.S. District Court on June 15, 1981 for an order requiring the defendant to pay interest to the plaintiffs as set forth in the judgment entry (App. D). The Court denied plaintiffs' motion in

October 1981 (App. B), holding in effect that the plaintiffs should have side stepped counsel for the defendant and made a demand on the General Accounting Office for the interest award by filing a transcript of the judgment entry with the said General Accounting Office (App. C).

The plaintiffs appealed the order of the trial court to the United States Sixth Circuit Court of Appeals; the Appellate Court affirmed on December 16, 1982 (App. A).

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The Petitioners present the following reasons why this petition for writ of certiorari should be granted

1. The order of the trial court contains a mandatory requirement that the defendant government pay the complainants interest on the amount of the award from the date of judgment; it placed no duty on the complainants to do anything.

2. The lower courts have interpreted 31 U.S.C. §724(a), in a way that places the statute in conflict with the order of the court.

3. Even if the requirements of 31 U.S.C. §724(a) were to be followed, it would be impossible for claimants to receive full benefits of a judgment with interest from the date of judgment; it is

impossible for anyone to file a transcript with the General Accounting Office the same day that a judgment with interest is entered.

4. 31 U.S.C §724(d) is vague, confusing and unconstitutional.

I.

THE ORDER OF THE TRIAL COURT CONTAINS A MANDATORY REQUIREMENT THAT THE DEFENDANT GOVERNMENT PAY THE COMPLAINTANTS INTEREST ON THE AMOUNT OF THE AWARD FROM THE DATE OF JUDGMENT; IT PLACED NO DUTY ON THE COMPLAINANTS TO DO ANYTHING

In deciding the case at bar the appellate court placed a duty on the claimants to circumvent defense counsel and deal directly with their client in an attempt to collect the judgment award. The trial court was inconsistent; its judgment made it mandatory for the government to pay interest from the date of the judgment and then denied claimants a right to this interest because they failed to file a transcript of the order with the General Accounting Office (GAO).

The Legislature has given the plaintiffs a clear statutory right to

interest on judgments against the United States in 28 U.S.C. §2411(b) and has given the court the power to render a judgment with such interest.

> [Except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under Section 1346 of this title, interest shall be computed at the rate of 4 per cent per annum from the date of the judgment up to, but not exceeding thirty (30) days after the date of approval of any appropriation Act providing for payment of the judgment.] (emphasis added)

The judgment in question is not only a judgment where interest automatically attaches, it is a judgment that specifically incorporates the payment of interest as an integral part of the judgment, and the court has no discretion to thereafter deny it on the basis of §724(a).

Once an order which gives the plaintiffs the right to a money judgment with statutory interest against the government is recorded in the Federal Clerk's Office, it should be the duty of the governments designated agent, the Attorney General, to notify its own General Accounting Office of the interest bearing award.

> "28 U.S.C. Section 2414. Payment of Judgments and Compromise Settlements.
>
> Payment of final judgment rendered by a district court against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or tribunal against the United States or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office <u>after certification by the Attorney General that it is in the best</u>

> interest of the United States to pay the same.
>
> Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final."

The public has the right to assume that what the Attorney General, as agent of the General Accounting Office, knows, is also known by the General Accounting Office. This would mean that the General Accounting Office would have constructive notice that there was a judgment against the government with interest from the filing date of the judgment. The public should not have to bear the needless responsibility of performing intra government office communications. When the Attorney General deemed it to be in the best interest of the government to

appeal this case rather than to certify the judgment to the General Accounting Office for payment, it assumed the responsibility of delaying the filing of the transcript in the General Accounting Office and of having the government underwrite the accumulating interest during the time of appeal.

> "In a suit against the United States Under the Public Vessels Act, after rendition of final judgment for plaintiff, plaintiff petitioned claiming a right to interest from the date damages were initially assessed in her favor. The District Court, Ditter, J., held that judgment was not simply a modification of the 1961 judgment for plaintiff, where the 1961 judgment was not simply modified by eight succeeding court decisions but was equivocally vacated when the Court of Appeals reversed the District court's pretrial order which granted summary judgment to plaintiff and afterwards the action was tried completely anew; and that plaintiff became entitled to interest as of the day final judgment on issue of

> liability was rendered and the fact that court had been unable to compute damages satisfactorily and its decision had been reversed and remanded twice would not be permitted to plaintiff's detriment. Judgment accordingly." Mascuilli, Admn. v. U.S., 383 F. Supp 50 (E.D. Penn. 1974)

See also Taylor v. Washington Terminal Co., 133 U.S App. D.C. 110, 308 F. Supp. 1152 (1970), where the Court ordered interest from the date of the original judgment, and Fassbinder v. Penn. R.R., 233 F. Supp. 574 (W.D. Penn. 1964) where the Court stated that where a defendant cannot show that it would be inequitable to pay interest such interest would run from the date of the judgment until paid.

Justice requires fairness. The government enacted law giving creditors such as the plaintiffs the right to collect interest on unpaid judgments.

The government now has the obligation to pay such interest.

The Attorney General has the legal duty to certify the judgment to the General Accounting Office under all normally accepted rules of procedure. He finally did this, but he only made a request for payment of the principal (App. F). The transmittal letter requesting payment ignored the court's order regarding interest.

It is plaintiffs' contention that a demand was made on the General Accounting Office for paymnent, through its agent the Attorney General, when the judgment was filed in the U.S. District Court Clerk's office and a copy sent to the government's counsel. Unless this agency relationship is recognized, prevailing plaintiffs in actions against the govern-

ment under the Federal Tort Claims Act will be blessed with law that guarantees them payment of interest and then cut to the quick by a law that negates this right.

The appellate court in its decision in this case stated:

> "Explicit in the language and the legislative history of §724(a) is the desire of Congress to limit the liability of the United States for interest payments. One way to limit such payments is to defer the date on which interest begins to accrue from the date judgment was entered to the date on which the prospective recipient of the accrued interest files a transcript of judgment with the GAO (App. 13).

From the above statement it would appear as if the appellate court is saying that the government adopted §724(a) as a tool to deceive and cheat claimants.

II

THE LOWER COURTS HAVE INTERPRETED 31 U.S.C. §724(a), IN A WAY THAT PLACES THE STATUTE IN CONFLICT WITH THE ORDER OF THE COURT.

Counsel for plaintiffs were informed by the Justice Department and by the General Accounting Office that the government is relying on 31 U.S.C. §724(a) to justify its refusal to pay the interest. Section 724(a) states:

> [Provided, that interest on a judgment of a district court to which the provisions of 2411(b) of Title 28 apply, payable from this appropriation, shall be paid only when such judgment becomes final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance.]

Section 724(a) does not totally preclude the payment of interest, nor

does an appeal by the defendant negate the interest part of a judgment order; it states that whatever interest is due and owing to a plaintiff such interest need not be paid by the government until the Appellate Court has reviewed the case. Section 724(a) states that the government will then pay interest from the date of the filing of the transcript in the General Accounting Office. Presumably, if the transcript were to be filed before an appeal, payment would be made from the pre-appeal filing date.

Section 724(a) is a confusing statute, especially when viewed in conjunction with 28 U.S.C. §2411(b). Section 724(a) could never have been adopted by Congress with the intention of denying payment of interest that is made an integral part of a judgment by the

court. It is inconceivable that the legislature would ever have intended that §724(a) should negate a part of a court's order, especially a part of an order that does not state that such a part is in any way conditional on some future act on the part of the prevailing party.

If the court would have intended at the time the judgment order was entered that the plaintiffs would have to do something to preserve their interest rights in the judgment, or that the government would have a right to modify the order, the same would have been so stated in the judgment entry. The government, having been ordered to pay interest, should not be allowed to relieve itself of its obligation, notwithstanding §724(a).

The defendant is in effect attempting to excuse itself from paying the interest part of the judgment on the supposition that it can bifurcate itself, create a dichotomy within its ranks and thereafter reject part of the court's order by claiming that its right hand had no duty to transfer a transcript of the judgment to its left hand.

III

EVEN IF THE REQUIREMENTS OF 31 U.S.C. 724(a) WERE TO BE FOLLOWED, IT WOULD BE IMPOSSIBLE FOR CLAIMANTS TO RECEIVE FULL BENEFITS OF A JUDGMENT WITH INTEREST FROM THE DATE OF JUDGMENT; IT IS IMPOSSIBLE FOR ANYONE TO FILE A TRANSCRIPT WITH THE GENERAL ACCOUNTING OFFICE THE SAME DAY THAT A JUDGMENT WITH INTEREST IS ENTERED

Under the lower court's interpretation of §724(a), the judgment, as rendered with interest from date of filing, could never be realized by the plaintiff; unless the plaintiffs would take a certified copy of the judgment on the day it was filed, board a jet to Washington, D.C. and race the transcript of the judgment to the General Accounting Office. If the judgment were rendered in California and filed there in the afternoon, it would be physically impossible

to receive the interest benefits as ordered by the court.

IV

31 U.S.C §724(d) IS VAGUE, CONFUSING AND UNCONSTITUTIONAL

The plaintiffs contend that 31 U.S.C. §724(a) violates the due process clause of the fifth amendment in that the applicable portions of §724 are vague and confusing; accordingly §724(a) is unconstitutional.

Basically, §724(a) establishes two provisos before interest is to be paid by the Government. The following portions of §724(a) enumerate those provisos; the applicable proviso is underlined.

> [I]nterest on a judgment of a district court to which the provisions of §2411(b) of Title 28 apply, payable from this appropriation, shall be paid only when such judgment becomes final after review on

> appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the general accounting office to the date of the mandate of affirmance...(emphasis added)

In the court below, the Government argued and the court held that the plaintiff failed to file the requisite transcript. The statute, however, nowhere states that the plaintiff is responsible for the filing of the transcript; nor does the statute state that the Attorney General is responsible for such filing. Accordingly, we have a duty established, but no indication on whom that duty rests; that is, the statute is vague and therefore violates the due process requirements established by the constitution.

Due process protects "those fundamental principles of liberty and justice

which lie at the base of all our civil and political institutions" Hurtado v. California, 110 U.S. 516, 535 (1884) and provides for such procedures which are required for the "protection of ultimate decency in a civilized society." Adamson v. California, 332 U.S. 56, 61 (1947) (Frankfurter, J. concurring).

From the perspective of due process, a law is void on its face if it is vague.

> [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the fair essential of due process of law. Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

Simply stated, life, liberty, property cannot be taken by a statute whose terms are "so vague, indefinite, and uncertain". Lanzetta v. New Jersey, 306

U.S. 451, 458 (1939). In reference to the instant case the words of this statute must be so clear that a person on whom a duty falls, is aware of what is required of him. Both regularity and reliability are values essential to the relationship between the Government and its people. Otherwise there exists an arbitrary exercise of power. Both vagueness and the arbitrary assignment of duty destroy the possibility of fair play which is such a fundamental concept underlying the due process requirements.

In the cse at bar the plaintiff was given a right to recover against the Government under the Federal Tort Claims Act and interest under both 28 U.S.C. §2411 and 31 U.S.C. §724(a), statutes here in question. These rights under the

Federal Tort Claims Acts were intended, as the Supreme Court stated, to be

> [T]he culmination of a long effort to mitigate unjust consequences of sovereign immunity from suit.

Feres v. United States, 340 U.S. 135, 139 (1975). Now the Government is arguing that because interest is only payable as permitted by the statute and because the Government intended to "reduce the interest costs," the Government has the right to place the burden of filing a transcript with the General Accounting Office on the plaintiff.

The plaintiff is not arguing that the right to recover interest exists independently of the statute; however, the plaintiff is contending that once such a right has been granted, the Government has far less latitude to

withdraw or to negate that right; namely, the procedure for withdrawing a right must comply with the standards of due process. In this case, the very vagueness of the statute and the confusion created thereby do not meet the requisite standards. In effect, if we believe the Government's interpretation, the Government has in the name of justice and fairness held out compensation with one hand and by a procedural slight of hand has withdrawn that right by drafting a statute so vague that even the most alert plaintiff will be kept guessing as to where the procedural ball is going to land. The way in which a right is enforced effects the exercise of that right.

Moreover, the plaintiff is given the impression, and led to assume, that the

duty for notifying the Government is placed on the Government itself; namely, the requirements of 28 U.S.C. §2411 place the burden of notifying the General Accounting Office on the Attorney General if no appeal is to be taken. The duty on the Attorney General is rightly placed because the Attorney General is the agent of the Government and in the best position to provide notice. That rational is even more persuasive when under §724(a) the Government initiates steps to postpone the payment of a judgment by appealing the judgment. Aside from the fact that the statute is vague, fundamental fairness demands that the Government, if it postpones compensation, also undertake the necessary steps to notify those agencies which need to be notified in order to make certain that those for whom

a just judgment has been rendered will also be fairly compensated.

In contrast, the Government, citing United States v. Varner, 400 F.2d 369 (1968), contends that 31 U.S.C. §724(a) was enacted

> To provide for the prompt payment of judgments and thereby eliminate or reduce the costs of interest.

Varner, supra at 372. Such purpose, however, does not include the concept of avoiding payment. Certainly the Government cannot be contending that Congress purposely intended to draft a vague statute to make it possible for the Government to find an escape hatch through which it could deny its citizens a property right.

Finally, the Supreme Court in Mathews v. Eldridge, 424 U.S. 319 (1976)

enunciated the following three-pronged standard for analyzing due process claims;

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors; first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used and the probable value if any of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved, fiscal, and administrative burdens that the additional or substitute procedural requirement would entail.

Eldridge, supra at 334-335. If we apply these standards to the instant facts, the conclusion is inevitable and clear. The due process requirements of the fifth amendment were violated. First, in this case the private interests are great.

The very fact that the Government has enacted legislation entitling persons to compensation and interest both acknowledges and underscores the importance of the private interests which are involved.

Second, the statute, as interpreted by the Government, does in fact erroneously deprive the plaintiffs of their rights, the vagueness as previously argued cannot help but inure to the disadvantage of the plaintiffs.

Finally, by either clarifying the statute and making either the plaintiff or the Government responsible for filing the transcript with the General Accounting Office or by establishing a procedure that the Attorney General will be responsible for filing such transcript, the purpose behind §724(a) will not be undermined. The purpose according to Varner,

supra is to minimize the costs of interest by assuring prompt payment when a right for recovery exists. The purpose is not to avoid payment when a clear property right has been established and reduced to judgment. Nor will such a simple procedure constitute an excessive administrative burden on the Government. In fact, the Attorney General, already being required to certify a judgment when no appeal is taken, is also in the best position to file a transcript of that judgment when the Attorney General decides to take that appeal.

The government in defending the constitutionality of §724(a) basically asserts that there is distinction between criminal and civil statutes and that §724(a) is not vague when viewed from a civil perspective and in its proper

context. But the Court in A.B. Small Co. v. American Sugar Refinery Co., 267 U.S. 233, 239 (1925) minimizes the criminal-civil distinction.

> The defendant attempts to distinguish those cases because they were criminal prosecutions. But that is not an adequate distinction. The ground or principle of the decisions was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be a rule or standard at all. (A. B. Small Co., supra at 239.)

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Petition for Writ of Certiorari, with Joint Appendix, has been furnished to The Solicitor General of the United States, Department of Justice, Washington D.C. 20530, and one copy to Attorney Barbara B. O'Malley, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, by regular U.S. Mail this 24th day of February, 1983.

Russell H. Volkema

APPENDIX:

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(A) Decision of the United States Court of Appeals for the Sixth Circuit Court dated December 16, 1982 .....A 1-26

(B) Order of Trial Court overruling plaintiffs' motion for an order requiring defendant to pay interest to plaintiffs. .....B 1-2

(C) Opinion of Trial Court denying payment of interest to plaintiffs. .....C 1-14

(D) Motion of plaintiffs for an order requiring the defendant to pay interest to plaintiffs pursuant to the judgment. .....D 1-4

(E) Order of the Trial Court awarding a money judgment with interest from the date of judgment. .....E 1-2

(F) Letter from U.S. Department of Justice with enclosure of a transmittal letter to the General Accounting Office for payment of the judgment-without a request for interest....F 1-3

No. 81-1716

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GERTRUDE REMINGA,
Executrix of the Estate
of Thomas H. Reminga,
Deceased, and

BARBARA SUE BREEDEN,
Executrix of the Estate
of James Robert Breeden,
Deceased,

Plaintiff-Appellants,

v.

UNITED STATES OF AMERICA

Defendant-Appellee.

APPEAL from the United States District Court for the Western District of Michgan

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Decided and Filed December 16, 1982

Before: KENNEDY AND WELLFORD, Circuit Judges; and CECIL, Senior Circuit Judge.

Kennedy, Circuit Judge. Plaintiff-appellants appeal the denial interest on their judgments against the United States

of America rendered under the Federal Tort Claims Act [28 U.S.C. Sections 1246(b), 2411(b); 31 U.S.C. §724a]. The United States District Court for the Western District of Michigan held that appellants' failed to file a transcript of the judgments with the General Accounting Office (GAO) barred their recovery of interest. We affirm.

On January 19, 1978, appellants were awarded judgments against the United States under the FTCA for the wrongful deaths of their husbands. The judgments were affirmed by this Court on October 2, 1980 in the total sum of $701,151.00, with interest from the date of judgments

and costs.[1] Reminga v. United States, 448 F. Supp. 445 (W.D. Mich. 1978), aff'd, 631 F.2d 449 (6th Cir. 1980). After time for appeal to the Supreme Court had expired, counsel for appellants demanded payment from the Justice Department and was informed that certification for payment would be made

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[1] Gertrude Reminga:

$280,226.00	with interest from date of judgment plus costs

Barbara Sue Breeden:

$377,925.00	with interest from date of judgment plus costs

Susan Reminga:

$ 14,000.00	with interest from date of judgment

Marjorie Breeden:

$ 8,000.00	with interest from date of judgment
$701,151.00	

by the Attorney General and transmitted to the General Accounting Office pursuant to 28 U.S.C. §2414.[2]

The certification was transmitted to the GAO under cover letter dated March 16, 1981. It requested payment to be disbursed as set forth in footnote 1, and noted that costs had yet to be assessed against the United States. On May 5, 1981, appellants received checks covering only the principal due under the judgments. The government refused and still refuses to pay the interest

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[2] 28 U.S.C. Section 2414 provides in pertinent part:
Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

awarded, asserting that appellants' failure to file a transcript of the judgments with the GAO bars their recovery of post-judgment interest.

Appellants moved for an order from the District Court requiring the government to pay interest on the judgments from January 19, 1978 (date judgments were entered) through May 5, 1981 (date principal was received) in the amount of $137,308.18, plus interest at the rate of 6% per year on that sum which will accrue from May 5, 1981 to the date of payment. Appellants' motion was denied in the order which they now appeal.

1. Statutory Provisions

Interest is recoverable against the United States only when specifically provided for by statute. United States

v. Goltra, 312 U.S. 203, 207 (1941); DeLucca v. United States, 670 F.2d 843, 846 (9th Cir. 1982); Bituminous Casualty Corp. v. Lynn, 503 F.2d 636, 643 (6th Cir. 1974); Gray v. Dukedom Bank, 216 F.2d 108 110 (6th Cir. 1954). The FTCA, 28 U.S.C. §2411(b), authorizes payment of interest by the United States on judgments entered against it. In pertinent part it provides:

> (b) Except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under §1346 of this title, interest shall be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of any appropriation Act providing for payment of the judgment.

It is well settled that implicit in the power of Congress to waive sovereign immunity, and to subject the United

States to liability for interest accrued on adverse judgments, is the authority to prescribe the terms and conditions under which the United States agrees to be liable. United States v. New York Rayon Importing Co., 329 U.S. 654, 659 (1947); United States v. Thayer-West Point Hotel Co., 329 U.S. 585, 588-589 (1947); see Tillson v. United States, 100 U.S. 43, 46-47 (1879); United States v. Dansby, 509 F. Supp. 188, 195 (D.C. Ohio 1981). Thus, the government argues that §2411(b) must be read in conjunction with 31 U.S.C. §724a. §724a is a permanent indefinite appropriations act for payment of interest on final judgments entered against the United States where claimant's payment was delayed solely because the United States appealed and lost. It states in pertinent part

> [t]hat interest on a judgment of a district court to which the provisions of §2411(b) of Tile 28 apply, payable from this appropriation, shall be paid only when such judgment becomes final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance...(emphasis added).

The federal interest statute is to be construed and applied according to its own purpose and meaning. Cleary v. Chalk, 488 F.2d 1315, 1322 (D.C. Cir. 1973); United States v. State of Maryland for the Use of Meyer, 349 F.2d 693, 695 (D.C. Cir. 1965); cf., Lynn, 503 F.2d at 641 (statute interpreted consistently with its legislative history). The primary purpose of §724a was to provide for prompt payment of judgments and thereby eliminate or reduce the costs of interest to the government. United

States v. Varner, 400 F.2d 369, 372 (5th Cir. 1968), citing Chicago, Rock Island and Pacific R.R. Co. v. United States, 206 F. Supp. 795 (S.D. Iowa 1962); H.R. Rep. No. 2638, 84th Cong., 2d Sess. 72 (1957). Reference must be made then to the purposes of sections 1141(b) and 724a in order to reconcile the inconsistencies in their language.

As noted in Delucca, 670 F.2d at 846-847:

> 31 U.S.C. §724a clearly overrides §2411(b)...The differing language regarding interest and appropriation acts in §2411(b) is vestigial, remaining from pre-1977, when §724a only applied to judgments less than $100,000. Before 1977, "an individual who recover[ed] [an amount in excess of $100,000] must await a special appropriation, during which period interest accumulates" pursuant to 28 U.S.C. §2411(b). United States v. Maryland, 349 F.2d 693, 695 (D.C. Cir. 1965). With the 1977 amendments to §724a removing the $100,000 limitation, the provision

> regarding interest in §724a completely overrides the contrary provision in §2411(b).

Thus, the language of §724a applies to the instant case and limits the government's liability for post-judgment interest to a period beginning with the date of the filing of the transcript of the judgments in the GAO. Indeed, appellants concede this to be the case but argue that the United States must bear the responsibility to file the transcript of judgments with the GAO, or alternatively, that the requirement violates due process.

The language of §724a which limits the liability of the government to interest accrued "from the date of filing," fails to specify who has the responsibility to file. Appellants contend that the language of the Act is

not explicit enough to put them on notice of a duty to file and, therefore, they should not be penalized for their failure to comply.

Appellants argue that fairness places the responsibility to file on the government. Relying upon principles of agency, appellants argue that "[t]he public has the right to assume that what the Attorney General as agent of the General Accounting Office knows, is also known by the said General Accounting Office." Moreover, appellants argue that when the Attorney General undertook to pursue an appeal and, therefore, to delay prompt payment of the judgments to appellants, he obligated the United States to underwrite the accumulating interest during the time of appeal. Accordingly, appellants conclude that

when, after the judgments were entered and filed with the District Court, copies were sent to the Attorney General, it was effectively filed with the GAO in compliance with §724a. Appellants' reliance on such principles of agency is misplaced.

Appellants' argument that justice demands we impose or assume knowledge on the part of the GAO as a necessary corollary knowledge of the Attorney General is based on the assumption that §724a filing is required solely to ensure that the GAO have knowledge of the interest-bearing judgment pending appeal. There is no support for such an assumption. Explicit in the language and the legislative history of §724a is the desire of Congress to limit the liability of the United States for interest

payments. One way to limit such payments is to defer the date on which interest begins to accrue from the date judgment was entered to the date on which the prospective recipient of the accrued interest files a transcript of judgment with the GAO. Also noted in the legislative history of §724a is the desire for continuity between provisions applicable to the payment of interest on judgments appealed from the court of claims and those appealed from the district courts. Provisions regarding the former required the filing of a transcript of judgment with the GAO. Continuity was obtained by imposing this provision on interest on judgments appealed from the district courts. As these varied purposes underlay the adoption of §724a, appellants' purported

entitlement to interest does not necessarily turn upon whether the GAO knew, or can be presumed to have known, of the existence of the judgments during the appeal period.

Assuming arguendo that the principal purpose of §724a filing requirement is to inform the GAO of the existence of interest-bearing judgments during the appeal period, it does not necessarily follow that principles of agency should be invoked to impose knowledge held by the Attorney General onto the GAO. As noted earlier, absent statutory authorization, appellants are not entitled to receive interest on their judgments against the United States. When Congress employed its power to subject the United States to liability for interest accrued on adverse judgments

under the FTCA, it did so within the context of explicitly prescribed terms and conditions. Congress is entitled to establish the administrative procedures which must be followed by the prospective recipient of post-judgment interest. Administrative convenience is a sufficient justification for the filing procedure set forth in §724a. To require the Justice Department to file transcripts of adverse judgments in every case involving the liability of the United States under the FTCA is an additional administrative burden.

Congress was free to impose the filing requirement on the claimants. The Court is not free to rewrite the statute by eliminating the requirement. Congress was presumably aware that the Attorney General would have notice of adverse

judgments at or about the dates they were entered. It nonetheless chose to impose this additional requirement on claimants.

We cannot accept appellants' contention that it is logical to impose the duty to file on the government. The financial interest at stake is that of appellants. It makes little sense to assume that Congress intended to place the ability to protect that interest in the hands of the government, the adversary party. Filing is the means by which appellants exercise and preserve their right to receive the interest on their judgments for the appeal period. Steps for collection of any judgment are ordinarily the responsibility of the prevailing party. Surely, then, Congress intended that the responsibility to file

rest on the appellants. There is no claim that they lacked the ability to do so.

Appellants rely on the language of Federal Rule of Appellate Procedure 37[3] to argue that interest should be payable from the date their judgments were entered. This reliance is misplaced. Rule 37 is expressly limited to situations where no procedure for the payment of interest has been provided by law.

Appellants next argue that

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[3] Interest on Judgments
Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

> [i]t is inconceivable that the legislature would ever have intended that §724a should negate a part of a court's order, especially a part of an order that does not state that such a part is in any way conditional.
>
> * * *
>
> If the Court would have intended at the time the judgment order was entered that the plaintiffs would have to do something to preserve their rights to the judgment or that the government would have a right to modify the order, the same would have been so stated in the judgment entry. The government, having been ordered to pay interest, cannot be [sic] relieve itself of its obligation, notwithstanding §724a.

Appellants emphasize that their judgments were unconditional, that any qualifications on it should have been so stated in the judgments. In their wish to elevate the interest provision of their judgments above the statutory interest provision of §724a, appellants

ignore the fact that judgment against the United States, assessing liability for accrued interest, is necessarily conditioned upon the statute which authorized its payment. To receive interest, appellants needed not only to have been awarded interest-bearing judgments, but also to have made the requisite filing with the GAO.

We agree with the Fifth Circuit which has expressly interpreted §724a to place the burden to file on the claimants. United States v. Varner, 400 F.2d 369, 372 (5th Cir, 1968). Further, in United States v. Culp, 346 F.2d 35, 36-37 (5th Cir. 1965), that court noted:

> Here, the Government approved the form of the judgment entered in the trial court. This may have contributed to the failure of the appellees to file their transcript of the trial court's judgment in the General Accounting Office which prevented them from

> earning legal interest from that date until the date of the mandate of this court. However, since both the time from which the interest can run and the rate of interest are fixed by statute, we do not consider it to be appropriate to change either of these provisions by a species of estoppel.

In summary, Congress conditioned appellants' right to post-judgment interest upon compliance with the filing requirements of 31 U.S.C. §724a, and appellants' failure to satisfy its mandate precludes their receipt of interest.

2. Constitutional Argument

Appellants argue, in the alternative, that even assuming Congress intended to impose upon them the responsibility to file, §724 is unconstitutionally vague and confusing.

They contend that the statute deprives them of property without due process of law because they were required to guess who had the duty to file the transcript of judgment. The government counters by conceding that although the statute could have been drafted with greater precision, that alone is not enough to invalidate it.

The District Court upheld §724a as constitutional, applying the standard that "[t]he section is not so vague and indefinite as to be no rule of standard at all." The test of constitutional clarity has been articulated in a variety of different way and the test by the District Court was not improper.

As the Eighth Circuit recently summarized, Horn v. Burns and Roe, 536 F.2d 251, 254 (8th Cir. 1976), see also

Kay v. Austin, 621 F.2d 809 (6th Cir. 1980), the standard to be applied in determining the constitutionality of a statute which has been challenged as void for vagueness is as follows:

> The Supreme Court has recognized that a noncriminal statute is unconstitutionally vague under the due process clause of the Fifth and Fourteen Amendments when its language does not convey sufficiently definite warning as to the prescribed conduct when measured by common understanding or practice. (citations omitted) A noncriminal statute is not unconstitutionally vague, however, where its terms are such that the ordinary person exercising common sense can sufficiently understand and fulfill its prescriptions. (citations omitted) A finding of vagueness will thus result only where "the exaction of obedience to a rule or standard***was so vague and indefinite as really to be no rule or standard at all***", A.B. Small Co. v. American Sugar Refining Co., 267 U.S. 233, 239, 45 S.Ct 295, 297 69 L.Ed. 589 (1925), or where the statute is written in such terms that "men of common intelligence must necessarily guess at its meaning and differ as to its application ***", Connally v.

General Construction Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926) (Citations omitted)

It does not appear that the contested provision of 31 U.S.C. §724a is so vague that a person exercising common sense could not sufficiently understand and fulfill its prescription. Commentators read §724a as placing the burden to file on a claimant. 2 L. Jayson, Handling Federal Tort Claims §301.10 (1981). Moreover, although onecourt has concluded to the contrary,[4] the majority of courts likewise agree that Congress imposed the responsibility to file on the claimant. See Culp, supra. It was held in United States v. State of Maryland for the Use of Meyer,

[4] Driscoll v. United States, Civil Action No. 75-146 (D.C. Del. June 20, 1980), noted in 2 L. Jayson, Handling Federal Tort Claims §301.01 (1981), and cited by both the appellants and the government.

349 F.2d at 695, that had claimants complied with the statute by filing a transcript of the judgment, each would have been entitled to receive payments with the interest authorized by §724a. Also, in the United States v. Wells. 337 F.2d 615, 616 (5th Cir. 1964), appellees conceded technical error in the calculation of interest and agreed to have it recomputed in compliance with §724a, accruing at 4% per year from the date of the filing of the transcript of judgment with the GAO.

Finally, the Comptroller General has cautioned that although interest on judgments under the FTCA is generally authorized by 28 U.S.C. §2411(b), the authority to pay interest is limited by 31 U.S.C. §724a. Vaillancourt v. United States, 58 Comp. Gen. 67, 69 (1978). I

that same opinion the Comptroller General set forth an explanation of §724a as provided by the Bureau of the Budget (not Office of Management and Budget).

> In district court cases which are appealed by the Government, interest would be eliminated from the date the judgment was rendered to the date the plaintiff filed a transcript thereof with the proper Government agency, and from the date of the mandate of affirmance to the time when a specific appropriation could be secured for the payment of the judgment. Hearings on Subcommittees of the House Committee on Appropriations, 84th Cong., 2d Sess., pt. 2, at 883 (1956). (emphasis added)

Id. at 71.

In light of the language and purpose of the Act, and the interpretations available in existent case law, appellant were sufficiently apprised of their responsibility to file under 31 U.S.C. §724a, and there challenge of unconstitutional vagueness must fail.

Accordingly, the order of the District Court affirmed.

Filed October 15, 1981

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERTRUDE REMINGA, Executrix of the Estate of Thomas H. Reminga, Deceased, and Barbara Sue Breeden, Executrix of the Estate of James Robert Breeden, Deceased,

Plaintiffs,

v. K60-72 C.A.

UNITED STATES OF AMERICA,

Defendants.

ORDER

In accord with the accompanying opinion, plaintiff's motion for an order requiring defendant to pay interest to plaintiffs is denied.

IT IS SO ORDERED.

Dated: October 15, 1981

Noel P. Fox, Senior Judge
United States District
Court
Western District
of Michigan

I hereby certify that the foregoing
is a true copy of the original on file in
this court and cause.

By: GERALD H. LIEFER, CLERK
Date: October 15, 1981

Filed October 15, 1981

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERTRUDE Reminga, Executrix of the Estate of Thomas H. Reminga, Deceased, and Barbara Sue Breeden, Executrix of the Estate of James Robert Breeden, Deceased,

Plaintiffs,

v. Case No. K60-72 C.A.

UNITED STATES OF AMERICA,

Defendants.

OPINION

This case is presently before the court on plaintiffs' motion for an order requiring defendant to pay interest to plaintiffs. The court entered a judgment in favor of plaintiffs on January 19,

1978. See: Reminga v. U.S., 448 F.Supp. 445 (W.D. Mich. 1978). As part of that Order, interest was to be paid from the date of judgment pursuant to 28 U.S.C. §2411(b). Appeal was affirmed on October 2, 1980. See: Reminga v. U.S., 631 F.2d 449 (6th Cir. 1980). Defendant has paid the principal amount, but refuses to pay any interest.

The authorization for payment of post-judgment interest by the government is contained in 28 U.S.C. §2411(b), which provides:

> Except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under section 1346 of this title, interest shall be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of

> any appropriation Act providing for payment of the judgment.

Prior to 1956, all judgments under the Tort Claims Act were payable only after appropriate acts were passed by Congress. In 1956, however, Congress enacted a permanent, indefinite appropriation to pay claims on judgments not in excess of $100,000. (See: 31 U.S.C. §724(a). Judgments in greater amounts had to be referred to Congress for funding through appropriation acts. Congress removed the $100,000 limitation in 1977 making the permanent, indefinite appropriation available for almost all Tort Claims Act judgments without limitation as to amount. 2 L. Jayson, Handling Federal Tort Claims, §307.01 (1981).

Before interest can be paid on a judgment against the United States, the present requirements of 31 U.S.C. §724(a) must be met. That statute, in pertinent part, provides:

> That interest on a judgment of a district court to which the provision of section 2411(b) of Title 28 apply, payable from this appropriation, shall be paid only when such judgment becomes final after review on appeal or petition by the United States and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance.

In this case, the government refuses to pay interest on the grounds that when the government appeals from an adverse judgment, the plaintiff is required to file the transcript of judgment with the General Account Office. Since the plaintiffs did not file the transcript

prior to the Sixth Circuit Court's affirmance, it is urged that they are now precluded from recovering interest in this action.

Commentators have stated that "if the United States does not take an appeal, then no interest is payable unless the claimant has filed a transcript of the judgment in the General Accounting Office; if he has done so, interest at the rate of 4 percent will be paid from the date of such filing until the date of the mandate of affirmance. The burden of filing the transcript rests with the claimant's counsel." 2 L. Jayson, Handling Federal Tort Claims, §307.01 (1981). Jayson however, cites no

case law support for the proposition that the burden is on the plaintiff to file the transcript.

The case provide some illumination on the issue presented by this motion.[1] In United States v. Varner, 400 F.2d 369, 372 (5th Cir. 1968), the court reversed a district court award of interest where individual judgments were less than $100,000 even though the total sum of the judgments was in excess of $100,000. In doing so, the court noted the Varners had failed to file their transcript of the trial court's judgment in the General

[1]The court decisions discussed in this opinion involve the pre-1977 provisions of §724(a). Those decisions make a distinction between judgments over $100,000, and less than $100,000. Such a distinction is no longer relevant after the 1977 amendments. However, the general principle that the duty to file a transcript rests with the plaintiff has not been changed.

Accounting Office and thus were prevented from earning legal interest from that date until the mandate of affirmance. After stating the purpose of the federal statute, 31 U.S.C. §724(a), the court in United States v. Maryland, 349 F.2d 695 (D.C. Cir. 1965), remarked:

> Each individual thus awarded no more than $100,000 could have complied with the statute by filing a transcript of the judgment; each would then have been entitled to receive payment with the interest authorized by Section 724(a); and each indeed would have been paid. See Harue v. Hayshi, supra at 309.

Vaillancourt v. United States, 58 Op. Comp. Gen. 67, 71 (1978), also states that the duty to file the transcript is the plaintiff's.

> In district court cases which are appealed by the government interest would be eliminated from the date the judgment was rendered to the date the

> plaintiff filed date transcript thereof with the proper Government agency.

Supra at 71, quoting, Hearings on Supplemental Appropriation Bill, 1957, Before Subcommittees of the House Committee on Appropriations, 84th Cong., 2d Sess., pt. 2, at 883 (1956).

In this case, after reviewing the facts, case law, and applicable statutes, this court concludes that plaintiffs are not entitled to interest. Since 31 U.S.C. $724(a) is much narrower than 28 U.S.C. §2411(b), it is apparent that one of the purpose of §724(a) was to reduce interest costs to the government. Although it may seem in equitable for the government to allow the recovery of interest, and to later, in another

statute, greatly restrict that right, that is precisely the result here. As defendant points out in its brief:

> Implicit in the waiver of sovereign immunity is the corollary that the Government may define the terms and conditions for maintenance of an action against the Government. See Honda v. Clark, 386 U.S. 484, 5601 (1967); United States v. Sherwood, 312 U.S. 584, 586 (1941).

Brief for Defendant at p. 2. The payment of post-judgment interest has been conditioned on the filing of the transcript of judgment by the plaintiff. Since plaintiffs have never filed a transcript of judgment, they have failed to meet the necessary requirements for obtaining interest, and thus precluded from obtaining any.

By its terms, §724(a) encourages prompt action on the part of the plaintiff. Since interest is computable from the date of the filing of the transcript to the mandate of affirmance, the quicker the transcript to the mandate of affirmance, the quicker the transcript is filed, the loner interest can accrue. Therefore, as early as possible. With such a financial interest at stake, it is irrational for plaintiff to rely on the government to file the transcript. Plaintiff's own interest would dictate that such a duty is his alone.

Plaintiffs alternatively seek to have this court declare §724(a) unconstitutional. They argue that the statute is so confusing that it should fall for vagueness. This argument must

fail. The section is not so vague and indefinite as to be no rule or standard required under it. Courts and commentators have had no difficulty in applying it. See: 2 L. Jayson, Handling Federal Claims, §307.01 (1981); United States v. Varner, supra; United States v. Maryland, supra. While it is apparent that this statute is not a model of clarity, and could have been drafted with greater precision, it is not unconstitutionally vague, and plaintiffs' arguments to the contrary must fail.

In reaching the decision that interest is not properly payable in this case, this court has taken into consideration Judge Layton's decision in Driscoll v. United States, Civil Action No. 75-146 (D.C. Delaware, June 20,

1980), noted in 2 L. Jayson, Handling Federal Tort Claims, §307.01 (1981). In that case, the court entered judgment with interest at 4 percent from the date of entry of judgment until paid. The government appealed the decision, and the Third Circuit affirmed. The judgment was paid, but without interest, because plaintiff had not filed a transcript of the district court judgment with the General Accounting Office. The court rejected the government's arguments based on §724(a). Since the judgment unambiguously ordered that interest accrue from the date of entry of judgment, the government, by refusing to pay interest, was in effect trying to collaterally attack the judgment, the court said. The government had never

raised the point that the order conflicted with the statute, thus plaintiff, relying on the judgment, had no reasons to believe it otherwise, the court stated, would be extremely inequitable.

While the rationale of Judge Layton's opinion is very appealing in this case, where the plaintiffs had difficulty understanding the views of the commentators. Equity, alone, cannot grant interest in this case when law establishes reasonable procedures to follow. As Blackstone said:

> ...the liberty of considering all cases in an equitable light must be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge.

Blackstone's Commentaries on the Law, p. 35. (Bernard C. Gavit, editor, 1941). Therefore, plaintiff's motion for an order requiring the payment of interest is denied.

Dated: October 15, 1981.

Noel P. Fox, Senior Judge
United States District of Michigan
Western District of Michigan

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

GERALD H. LIEFER, CLERK

By _____
Deputy Clerk

Date October 15, 1981

Filed June 15, 1981

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERTRUDE REMINGA, Executrix of the Estate of Thomas H. Reminga, Deceased, and Barbara Sue Breeden, Executrix of the Estate of James Robert Breeden, Deceased,

Plaintiffs,

v. Case No. K60-72 C.A.

UNITED STATES OF AMERICA,

Defendants.

MOTION FOR AN ORDER
REQUIRING THE DEFENDANT
TO PAY INTEREST TO PLAINTIFFS

Plaintiff moves the Court for an Order requiring defendant United States of America to pay plaintiffs interest pursuant to this Court's Order dated January 19, 1978; and for an Order requiring the defendant to pay added

interest on the unpaid interest from the date the defendant refused to pay said interest to plaintiffs.

MEMORANDUM

This Court rendered a verdict, a copy of which is attached, in favor of the plaintiffs and against the defendant government, on January 19, 1978, with interest from the date of judgment to the Sixth Circuit Court of Appeals. The Court of Appeals, in case No. 78-1154, affirmed the judgment on October 2, 1980. Thereafter, Russell H. Volkema, one of the counsel for the plaintiffs, called the Justice Department about payment. Said counsel for the plaintiff was informed that Mr. Mark Dombroff was now in charge of the matter. Mr. Dombroff stated to the said plaintiffs' counsel that he would make a demand to the

accounting office for payment. When the check arrived, on the 5th day of May, 1981, it was for the amount of the principle only. The government refused, and is still refusing, to pay the interest. Plaintiffs request that the Court order the defendant government to pay, forthwith, the interest on the judgment from January 19, 1978, (date of judgment) through May 5, 1981, (date of receipt of the principle sum) in the sum of One Hundred Thirty Seven Thousand Three Hundred Eight Dollars and Eighteen cents ($137,308.18), and interest at the rate of six percent (6%) on the said sum from May 5, 1981, to the date of payment by the defendant government to the plaintiffs.

Respectfully submitted,

Russell H. Volkema
Suite 1006
50 West Broad Street
Columbus, Ohio 43215
(614) 221-5207

and

Richard Walsh
133 West Cedar Street
Kalamazoo, Michigan
(616) 328-3690

Attorneys for Plaintiffs

By: _____
Russell H. Volkema

CERTIFICATE OF SERVICE

I hereby certify that I have served two (2) copies of this Motion and Memorandum upon Mr. Mark Dombroff, U.S. Department of Justice, Washington, D.C. 20591, Attorney for the United States of America, and two (2) copies upon Robert Green Assistant U.S. Attorney, 544 Federal Building, Grand Rapids, Michigan 49503 via U.S. Mail on the 11th day of June 1981.

_____
Russell H. Volkema

Filed January 19, 1978

IN THE UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN

GERTRUDE REMINGA, Executrix of the Estate of Thomas H. Reminga, Deceased, and BARBARA SUE BREEDEN, Executrix of the Estate of James Robert Breeden, Deceased,

Plaintiffs,

v. Case No. K60-71 C.A.

UNITED STATES OF AMERICA,

Defendant.

ORDER

This action having come for trial before the court, and the issues having been duly tried, and findings of fact and conclusions of law having been duly rendered,

IT IS HEREBY ORDERED that the plaintiff Gertrude Reminga recover of the defendant, the United States of America, the sum of $280,266.00 with interest from the date of judgment, and costs.

IT IS FURTHER ORDERED that Susan Reminga recover the sum of $14,000.00, Mary Reminga the sum of $21,000.00, and Marjorie Breedn the sum of $8,000.00 of the defendant, the United States of America, with interest from the date of judgment.

Dated: January 19, 1978.

_____
Chief Judge,
U.S. District Court
Western District of
Michigan

Certified as a True copy

Gerald H. Leifer Clerk
U.S. District Court
Western District of Michigan
Dated February 27, 1981

U.S. Department of Justice

Washington, D.C. 20530
May 21, 1982
Telephone: 202-724-7172

MAD:kh
157-37-397

Russell H. Volkema, Esq.
Volkema & Scherner
Wash & Miller, P.C.
133 W. Cedar Street
Kalamazoo, MI 49007

Re: Gertrude Reminga, et al. v.
United States, USDC WD MI,
Civil Action No. K-60-71CA

Dear Russ:

Pursuant to our telephone conversation enclosed please find the transmittal letter that we used in transmitting the judgment in this matter to the General Accounting Office for payment.

Very truly yours,

MARK A. DOMBROFF
Director, Torts Branch
Civil Division

Enclosure

March 16, 1981

TSM: MADombroff:kh

Telephone: 202-724-7172

General Accounting Office
441 G. Street, N.W., Rm 5757
Washington, D.C. 20548

Attn: Mr. George Hart
Cheif, Payment Branch
Claims Division

Re: Gertrude Reminga, et al. v.
United States USDC W.D.M1,
Civil Action No. K60-72-CA

Dear Sir:

Enclosed herewith is a certified copy of the Order entering judgment in the above-captioned matter. No proceedings for the review of this Judgment will be taken. Costs have not, as yet, been assessed against the United States.

The checks in satisfaction of the Judgment should be mailed to Mark A. Dombroff, Esq., Director, Torts Branch, Civil Division, U.S. Department of Justice, Post Office Box 14271, Washington, D.C. 20044, and be made payable to:

Gertrude Reminga $280,226.00

Barbara Sue Breeden.. 377,925.00

Susan Reminga..... 14,000.00

Mary Reminga 21,000.00

Marjorie Breeden..... 8,000.00

Delivery will be made by this office to counsel for the judgment creditor in return for the proper release of any lien or other claims and the entry of a satisfaction of judgment.

Very truly yours,

THOMAS S. MARTIN
Acting Assistant Attorney General
Civil Division

By: MARK A. DOMBROFF
Director, Torts Branch

Enclosure

cc: Michael J. Pangia, Esq.
Assistant Cheif Counsel
Federal Aviation Administration
800 Independence Ave., SW, Rm. 912
Washinton, D.C.20591